IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8076 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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JAYESH BALASHANKAR DAVE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8076 of 1995

MR JD AJMERA for Petitioner No. 1

MR VM PANCHOLI GOVT PLEADER for Respondent No. 1-4

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/07/2001

ORAL JUDGEMENT

1. Heard Mr. J.D. Ajmera, learned counsel for the petitioner and Mr. V.M. Pancholi, learned AGP appearing on behalf of respondent State.

2. Petitioner has filed this petition claiming graded scale of Rs. 1640-2900 on completion of nine years service. The petitioner was appointed on 18-5-1984 as Junior Clerk in the office of Mamlatdar at Bhuj under Kutch district. Thereafter, at the request of the petitioner, he was transferred to Surendranagar district by an order dated 7-1-1993. According to the Government circular, if any inter district transfer is made at the request of an employee, that employee will be put at the lowest level of the grade in the seniority. While continuing service in Surendranagar district petitioner has completed nine years as clerk and according to the

scale of pay fixed by the Government, petitioner is entitled to graded scale of Rs. 1640-2900 on the date he has completed nine years in the post of clerk. This benefit of graded scale has been denied to the petitioner on the ground that, since he is the junior most Clerk in Surendranagar District and unless he completes nine years service as Clerk in Surendranagar District, he is not entitled to the graded scale of Rs. 1640-2900.

3. It is submitted by Mr. Pancholi, learned AGP that, there may be seniors in Surendranagar district office in the grade of Clerk than the petitioner who has not completed nine years and incase the petitioner is given benefit of earlier service and graded scale of pay, then there will be an anomaly in the pay of the junior and senior in Surendranagar District office. I cannot agree with the submission of Mr. Pancholi, learned AGP appearing on behalf of the State respondents. Seniority in Surendranagar District has nothing to do with the earlier service of the petitioner in Kutch district as his services in Kutch district has not been wiped out and this will count for all purposes in Government service. The petitioner may be a junior because of his transfer to Surendranagar district at his request, but that has no connection with the pay. In service a junior can get higher pay than the senior under various circumstances and the present one can be one of those circumstances. In such cases if a junior transferred employee gets graded scale of pay in that event the seniors who has not completed nine years are not entitled to claim stepping up of their pay. Since there is no nexus between seniority and actual receipt of salary, I am of the view that an illegality has been committed by the respondent Government in not allowing graded scale to the petitioner. His earlier service may not be counted for the purpose of seniority, but for the purpose of graded scale, though the petitioner has rendered service in two districts, same should be granted. Consequently I am of the view that, there is sufficient force in the petition and the petition deserves to be allowed. Accordingly the petition is allowed. Respondents are directed to accord graded scale of Rs. 1640-2900 to the petitioner from the date on which he has completed nine years in service, counting the services rendered in both the districts in the post of Clerk and pay the petitioner all consequential benefits. Rule made absolute to the aforesaid extent. I make no order as to costs.

Dt: 24-7-2001 (P.K. Sarkar, J)

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